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AUG 26 2002

Public Disclosure Commission



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August 26, 2002

via HAND DELIVERY

Public Disclosure Commission
State of Washington
Attention: Susan Harris
711 Capitol Way, Room 206
Olympia, WA 98504-0908

**Re: In Re Compliance With RCW 32.17, Washington Democratic Central
Committee, PDC Case No. 03-005 and 03-026**

Members of the Commission:

I write to you on behalf of the Washington State Democratic Central Committee ("Washington State Democrats") with respect to the complaint and report of investigation to be presented to you on Tuesday, August 27.

In its report, the Commission staff recommends that the Commission "send the matter to the Office of the Attorney General for further action." With all due respect, the recommendation is unwarranted, premature, and inappropriate on the record before the Commission. The Washington State Democrats respectfully suggest that the Commission

- (a) defer the staff's recommendations until the September Commission meeting;
- (b) direct the staff to provide a summary of prior fines and settlements in prior enforcement actions, including those involving the Washington Republicans;
and
- (c) direct the staff to negotiate in good faith, or appoint a member or members of this Commission to negotiate directly a fair and evenhanded settlement of the dispute.

To date, the staff has insisted on radical sanctions that go far beyond what are necessary to achieve the purposes of public disclosure and instead threaten to cripple political debate in further elections and alter the balance of power between the major

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political debate in further elections and alter the balance of power between the major political parties. The fines sought by the staff dramatically exceed those negotiated in prior enforcement actions – even those involving more egregious and serious violations.

The current allegations indisputably arise from an unfortunate *clerical error* and nothing even remotely suggests any intentional violation of the disclosure requirements. The Washington Democrats have fully cooperated in the staff investigation, have readily accepted responsibility for the errors, and have repeatedly offered to accept financial penalties and to implement other measures (described below) far more likely to ensure future compliance.

Unfortunately, the Commission staff has failed to negotiate in good faith a responsible settlement of the dispute, comparable to those negotiated in numerous prior cases. With all due respect, a referral to the Attorney General at this point would represent little more than an abdication of the staff's public responsibility to assist in compliance, inform the public, and to vindicate the interest served by the public disclosure statutes.

A. Washington State Democrats Have a Strong Compliance Record

As an initial matter, in evaluating the staff recommendations, the Commission should take note that the Washington State Democrats have a long history of careful compliance with reporting and expenditure obligations. The Washington Democrats have not previously been the subject of enforcement actions, nor has the Party sought to evade or shirk its reporting responsibilities to the State. Indeed, the Washington State Democrats have worked closely with Commission staff to ensure timely, complete, and full disclosure of contributions. There is no pattern of prior misconduct or statutory violations that might suggest or warrant a particularly severe penalty.

B. No Allegations of Intentional Misconduct

Similarly, the Commission's report reflects their candid concession that there is *no* evidence of intentional misconduct. Indeed, the party immediately notified the Commission in July of 2000 of its compliance difficulties when the Party was confronted with the sudden change of comptrollers. The staff was explicitly put on notice at that time – over two years ago – that the party would likely have difficulty in fully complying with its disclosure obligations. Not once during the following *year*

did the Commission identify any problems or errors in the reports filed by the Washington Democrats.

When the Commission did raise a question and sought additional information over a year later in August of 2001, and again in December 2001, the Party immediately responded to the inquiry, providing additional information and refileing reports it believed had been previously filed with the Commission. No questions were raised at that time, no allegations leveled, no probe, inquiry, or fines proposed.

There is nothing in the record before the Commission that even remotely suggests misconduct, improper expenditures, conversion of political funds for personal purposes, or any other example of egregious intentional misconduct by the state party or its officers. Indeed, as the Commission staff expressly admits, the reporting failures before the Commission were undisputedly the result of (a) unintentional clerical errors; (b) that involved contributions almost entirely otherwise disclosed to the Commission from either the donors or by duplicative filings. Although the dollar amounts involved are unfortunately large, they were the result of an innocent clerical error and there is absolutely no evidence to suggest malicious, intentional, or flagrant behavior that might warrant particularly severe sanctions.¹

¹ The commission staff, in its report, goes out of its way to characterize the Washington State Democrats as "grossly negligent," but this inflammatory rhetoric is simply unsupported by the record. The staff report suggests that an untrained "office assistant" was given the comptroller responsibilities without guidance on compliance procedures. But the talented and responsible individual who assumed the position of comptroller in July of 2000 does not deserve this public slight. Assuming the comptroller responsibilities, including the complex reporting requirements, in the midst of a heated campaign was a daunting challenge and would have been for anyone. That is precisely why the party alerted the Commission staff to the problem in July 2000. The party had numerous safeguards in place during 2000 to ensure timely and accurate reporting, including a detailed Comptroller Procedures Handbook explaining the procedures involved in tracking and reporting contributions. The party had fully and consistently complied with its reporting obligations using established these very forms and procedures for, literally, *years* without incident or hint of trouble. In hindsight, the party plainly could have done more and obviously did ultimately fall short of its responsibilities to file appropriate disclosures with the Commission. But to suggest that the party was "grossly negligent" simply because the filing discrepancies occurred is little more than empty "ipso facto" reasoning.

C. The Washington Democrats Have Fully Cooperated in the Investigation

In response to the Commission's most recent investigation, the Washington Democrats have, from the outset and without hesitation, fully and completely cooperated. The Party has provided all the documents sought by the Commission, produced witnesses for investigative interviews, and even retained its own auditor to provide a detailed explanation to the Commission for the contributions at issue. As a result, Washington Democrats has even *voluntarily* identified several additional reporting errors that it discovered during the course of this investigation, even though no inquiry had been made about them, either by the press or the Commission.

D. The Washington Democrats Stand Ready to Accept Responsibility for the Reporting Errors

Over the course of the last month, in addition to cooperating with the Public Disclosure Commission, the Washington State Democrats have repeatedly accepted responsibility for the clerical reporting errors and have asked the Commission to enter into good faith negotiations over a responsible settlement and steps to ensure that the mistakes never happen again. The Washington Democrats' proposals have included: (a) significant financial penalties to the Party (in excess of \$50,000); (b) significant organizational changes within the Party; (c) searching audits by third-party auditors; and (d) significant new mandatory training programs for all state party employees responsible for providing disclosure and reporting requirements.

PDC staff has summarily rejected the Party's proposals and have insisted instead on draconian financial sanctions far beyond the realistic ability of the Party to pay. The range of sanctions proposed and insisted on by staff would significantly cripple the Washington Democrats' ability to support democratic candidates in upcoming elections, would divert an enormous amount of private individual political contributions to the state, and appear designed to materially alter the playing field in the upcoming elections to the Democrats' disadvantage rather than vindicating public interest in enforcement of the disclosure requirements. With all due respect, the purpose of the disclosure statutes is to facilitate the operation of our representative democracy, not to interfere with its operation. A reasonable resolution of this dispute should be calculated to vindicate the public interest in disclosure, to ensure that no further violations occur, and to impose a penalty proportionate to the *culpability* of the offender.

The staff settlement proposals grossly exceed prior settlements of which the Washington Democrats are aware—even settlement of egregious violations, intentional misconduct, were repeat offenses by flagrant violators. In such cases, the Commission staff has routinely negotiated settlements far below \$50,000.

Here, the staff is insisting on a fine that is many times more punitive than even those imposed on intentional and unrepentant violators. Given that the violations in this case are indisputably the result of innocent clerical errors, it is difficult to imagine the foundation for the staff's settlement posture, other than embarrassment arising from the press coverage of the matter. But discomfort or embarrassment resulting from negative press coverage and the staff's prior knowledge of the alleged violations cannot justify the staff's current settlement posture. With all due respect to the Commission staff, this is simply not an appropriate basis to impose radical sanctions, particularly where those sanctions would fundamentally alter the operation of our democratic system in the coming election cycles.

The Washington Democrats respectfully submit that a referral to the Attorney General for enforcement proceedings at this time on this record would be an unwarranted and inappropriate abdication of responsibility by the staff. The Washington Democrats respectfully suggest that the Commission:

- a. defer the staff recommendation to the next scheduled meeting of the Commission;
- b. direct enforcement staff to compile a summary of prior fines and settlements involving enforcement actions against others, including the Washington Republicans, and to conduct further negotiations with the party based on that enforcement history, with an eye toward achieving equitable and evenhanded justice among *all* parties before it; and
- c. direct the staff to fulfill its statutory obligation to vindicate the public interest in full disclosure by negotiating in good faith on a rational basis remedies calculated to ensure that no further violations occur and to impose financial penalties rationally related to the unintentional violations involved in this case. In the alternative, the Commission should consider appointing one

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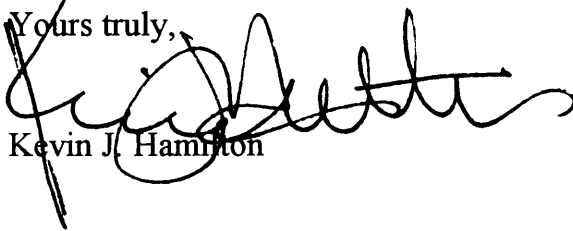
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or more of its own members to negotiate directly a responsible resolution of this matter.

The Washington Democrats respectfully request the opportunity to address the Commission during the time allotted for consideration of this case and would welcome the opportunity to respond to any questions members of the Commission might have.

Thank you in advance for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "Kevin J. Hamilton", written over the printed name.

Kevin J. Hamilton

KJH:md

cc: Mr. Paul Berendt